



The Comptroller General
of the United States

Washington, D.C. 20548

Reback

Decision

Matter of: EPE Technologies, Inc.--Request for
Reconsideration
File: B-233492.2
Date: March 28, 1989

DIGEST

Protest dismissed as untimely will not be reconsidered when request for reconsideration does not establish any factual or legal errors in the prior decision.

DECISION

EPE Technologies, Inc., requests reconsideration of our decision in EPE Technologies, Inc., B-233492, Feb. 21, 1989, 89-1 CPD ¶ _____. In that decision, we dismissed in part and denied in part EPE's protest against the award of a contract to United Power Corporation under request for proposals (RFP) No. DMA800-88-RA032 issued by the Defense Mapping Agency (DMA) for the acquisition of a quantity of power conditioning systems. In its request for reconsideration, EPE argues that we erred in dismissing as untimely a portion of its original protest.

We deny the request for reconsideration.

In its original protest to our Office, EPE had argued that the product offered by United Power failed to conform to the specification requirement that offered products employ a "single shaft" design. A single shaft design is one in which the power conditioner's motor, generator rotors, flywheel and exciter are mounted on a single shaft. In contrast, the United Power product employs a multiple shaft design which then joins the shafts on one axis by means of a coupling device.

The agency, in response to this protest issue, had argued that the matter had been untimely raised. The agency stated in its report that EPE had filed an earlier agency-level protest which did not raise this allegation and that the agency-level protest showed that EPE was sufficiently familiar with the United Power product to have raised the issue in its agency-level protest. It also stated that, in

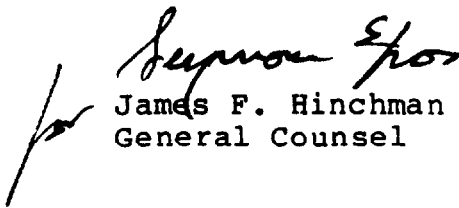
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any event, the amended solicitation which provided that "the requirement for a single shaft design could be met or exceeded by other single axis, non-belt driven designs," permitted the awardee's coupling design. EPE did not rebut the agency's argument as to when it knew the basis for this protest issue in its comments on the agency report. We agreed with the agency that this protest issue had been untimely raised with our Office because the protest had been filed more than 10 working days from the date the protester knew or should have known the basis for its protest. See 4 C.F.R. § 21.2(a) (1988). Consequently, we dismissed this issue.

In its request for reconsideration, EPE alleges for the first time that it had not learned of United Power's "coupled" design until after it had filed its agency-level protest. According to EPE, it did not learn of United Power's design until it spoke to United Power's motor and generator supplier and that this was subsequent to the time when it had filed its agency-level protest. Accordingly, it contends that its protest that United Power's product was nonconforming was filed timely.

EPE's request for reconsideration provides no basis to reverse our decision that EPE's protest issue was untimely. As indicated above, we found untimely EPE's allegation that the awardee's product was nonconforming because it was filed more than 10 working days from the date the protester knew or should have known its basis of protest. EPE has not established that this conclusion was incorrect and that its protest was timely filed. In fact, EPE's reconsideration request still does not specify on what date EPE obtained the information which formed the basis of this protest allegation for purposes of determining timeliness.

We deny the request for reconsideration.


James F. Hinchman
General Counsel